

US EPA ARCHIVE DOCUMENT

**MEMORANDUM OF AGREEMENT
BETWEEN
THE U.S. ARMY, CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
AND
CITY OF BRIDGEPORT
Regarding the Role of the
Corps of Engineers as the Brownfields Site Manager
FOR THE
Revolving Loan Program**

THIS MEMORANDUM OF AGREEMENT (hereafter referred to as MOA), entered into as of the last day and date below written by and between the U.S. Army Corps of Engineers, New England District (hereinafter referred to as the "Corps"), acting herein by its Colonel Brian E. Osterndorf (the "Commander") and Bridgeport, CT (hereafter referred to as the "City"), acting herein by its Director of Planning and Economic Development, Michael Freimuth, herein referred to as Director.

RECITALS

WITNESS THAT:

WHEREAS, the United States Environmental Protection Agency (hereafter "EPA") administers a program known as the Brownfields Cleanup Revolving Loan Fund Program (hereafter the "BCRLF Program") under which non-federal political entities oversee non-time critical removal actions of certain environmental hazards pursuant to Comprehensive Environmental Response Compensation Liability Act (CERCLA) and the National Contingency Plan (NCP); and

WHEREAS, Bridgeport, CT has been named by EPA as a Brownfields Cooperative Agreement recipient and Lead Agency pursuant to a Cooperative Agreement, between

EPA and Bridgeport, CT, dated September 29, 1997, entered into pursuant to the provisions of 40 Code of Federal Regulations (CFR) Part 35, Subpart O (Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments) for the remediation of environmental contamination on selected Brownfield sites, a copy of which is attached hereto and incorporated herein; and **WHEREAS**, the Cooperative Agreement with EPA requires that the lead agency designate a qualified government environmental specialist as Brownfields Site Manager who shall assume all on scene-coordinator (OSC) responsibilities as described in 40 CFR Part 300; and

WHEREAS, the City does not have an officer or employee who is qualified as a Brownfields Site Manager as defined in the Brownfields Cleanup Revolving Loan Fund Administrative Manual (EPA 500-B-98-001) and has therefore sought the assistance of the Corps which has agreed to serve as the Brownfields Site Manager; and

WHEREAS, EPA has entered into an Interagency Agreement with the Corps (EPA/IAG Number DW96940207-01-0) in the amount of \$40,000 for the Corps to provide Brownfields Site Manager Support to Bridgeport, CT; and

WHEREAS, it is agreed that the Corps will bill EPA on hourly basis for their services as Brownfields Manager and request reimbursement for those services on a monthly basis and the Corps will submit a copy of each monthly request to the Grow Bridgeport Fund; and

WHEREAS, the Corps is ready, willing and able to perform the services of an On Scene Coordinator (OSC).

AGREEMENT

NOW, THEREFORE; the parties agree as follows:

ARTICLE I - STATEMENT OF PURPOSE

The purpose of this Agreement is to outline the roles and responsibilities of the Corps, acting as Brownfields Site Manager under cooperative agreement with the City of Bridgeport, CT acting as Lead Agency pursuant to CERCLA and the NCP.

ARTICLE II - SCOPE OF WORK

Subject to the terms and conditions of this Agreement, the Corps shall provide all services as Brownfields Site Manager in accordance with the Scope of Work attached hereto as Exhibit A and incorporated herein by reference and in accordance with the provisions of the NCP, 40 CFR Section 300, CERCLA and BCRLF Administrative Manual.

ARTICLE III - TERM AND DURATION

The effective date of this Agreement shall be the day and year as last written below, and shall continue until this Agreement expires two years from date of execution, is terminated in accordance with its terms, or until the Corps withdraws or discontinues its responsibilities under the terms and conditions of this Agreement in accordance with Article IX, whichever event occurs first.

ARTICLE IV - NECESSARY DATA

The City agrees to provide to the Corps all available data required by the CERCLA, NCP and BCRLF in order for the Corps to perform its duties as Brownfields Site Manager.

ARTICLE V - RIGHT OF ENTRY

The City will be responsible to provide to the Corps an irrevocable right for the Corps and the City to enter upon any and all lands associated with the Brownfield Sites (project lands) at any time during the life of this MOA until the completion of the environmental clean-up. This right of entry includes the rights of ingress and egress on other lands, provided such ingress and egress is necessary and not otherwise available to the Corps. If for any reason the City is unable to provide the necessary rights of entry, the City understands the Corps may be prevented from performing all or part of its duties under this agreement.

B. The Corps shall not be responsible for, and the City shall hold the Corps harmless from claims for, damages to property or injuries to persons which may arise from or be incident to the use and occupation of said premises, except where such damages or injuries are due to the fault or negligence of the Corps.

ARTICLE VI - RESPONSIBILITIES OF BROWNFIELDS SITE MANAGER & COSTS OF SERVICES

A. The Corps, through one of its designated project managers, shall be the Brownfield Site Manager. The Brownfields Site Manager shall be the on-scene coordinator (OSC) responsible for carrying out the OSC duties described in the NCP, CERCLA, 40 CFR Section 300, and the BCRLF Administrative Manual, and all of the responsibilities set forth in Exhibit A, attached hereto. The City shall be the "lead agency" as defined in the NCP. The lead agency is responsible for ensuring that BCRLF response actions are conducted in conformance with CERCLA, the NCP, and the terms and conditions of the Cooperative Agreement. The City may acquire or otherwise engage

the services of other entities that have experience with overseeing and carrying out environmental response actions to assist it in its capacity as lead agency; however, the role of "lead agency" cannot be assigned or delegated to any entity other than the cooperative agreement recipient. The Corps shall assist the City with its role as lead agency by conducting those tasks described in Exhibit A. In the event the owner/developer and/or his contractor or LEP refuses or fails to comply with a directive from the OSC, it shall be the responsibility of the lead agency to enforce said directive.

B. The Corps shall be compensated by EPA for the OSC services that it provides to the City. The Corps shall be compensated in accordance with the aforesaid Interagency Agreement between the EPA and the Corps. The Corps shall not be obligated to provide any OSC Services to the City after the \$40,000 in funding from the EPA has been expended, unless additional OSC services are requested by the City, agreed to by both the City and the Corps by written amendment to this agreement, and additional funding is authorized by EPA.

ARTICLE VII - SITE DESIGNATION

Upon receipt of a BCRLF loan application from an owner/developer and acceptance of the application as a potential project, the City shall designate in writing to the EPA and the Corps the name of the owner/developer and location of the property that shall be subject to this Agreement. Within 7 calendar days after receipt of such notice the Corps must acknowledge in writing to the City whether it will serve as the OSC for each property so designated.

ARTICLE VIII - INDEMNIFICATION

A. The City hereby indemnifies, will hold harmless and will defend the Corps from and against all loss, claim, liability and expense, including reasonable attorney' fees and court costs, in connection with the Corps' participation as Brownfields Site Manager unless any such claim in liability arises out of the fault or negligence of the Corps, its employees, servants or agents.

B. The Corps shall hold and save the City free from all damages and claims arising from the performance of the Corps' services hereunder, except for damages and claims arising out of the negligence of the City, its employees, agents, and construction contractors. The liability of the Corps shall be limited by the provisions of the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq.

ARTICLE IX - RIGHT TO TERMINATE

The City reserves the right to relieve the OSC of its responsibilities under this agreement and the OSC reserves the right to withdraw from or terminate its participation under this agreement by written notice. Any such notice must be given (60) days prior to the effective date of the termination.

ARTICLE X - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the

services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance in accordance with this Agreement.

ARTICLE XI - NOTICES AND POINTS OF CONTACT

All notices desired or required to be delivered hereunder shall be in writing and shall be delivered by first-class mail, return receipt requested, or by overnight mail or courier service addressed to the other party at the address given below or at such other address identified in writing to the other party. The persons listed below are designated for purposes of notice under this Agreement;

Corps of Engineers:

Mr. Gary Morin, Project Manager, U.S. Army, Corps of Engineers, New England District, ATTN: CENED-PP-E, 696 Virginia Road, Concord, Massachusetts 01742-2751

City of Bridgeport:

The City of Bridgeport, CT Director, Office of Planning and Economic Development, 999 Broad Street, Bridgeport, CT 06604:

The City of Bridgeport, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604;

Richard McHugh, City of Bridgeport, 999 Broad St., Bridgeport, Ct. 06601

and Michael B. Taylor, Vita Nuova LLC. P.O. Box 160, Newtown, Ct. 06470

ARTICLE XII - COORDINATION

The points of contact who shall coordinate scheduling, planning, specifications, modifications, and other matters relating to the activities to be conducted under this Agreement including but not limited to the collection and transfer to City all documents and records in the possession of the Army Corps related to this agreement upon

termination shall be the persons named in Article XI as the representative of the Corps, Richard McHugh and Vita Nuova LLC, and their respective replacements.

ARTICLE XIII – EXTENT OF AGREEMENT AND AMENDMENTS

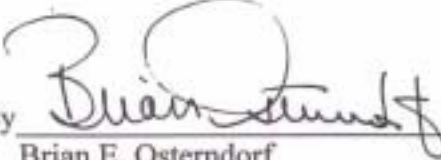
This MOA shall constitute the entire agreement between the Corps and the City with regard to the provision of services by the Corps as the OSC. This MOA shall not supercede and shall be subject to the Interagency Agreement between the Corps and EPA dated September 9, 1999 and the Cooperative Agreement between the EPA and the City of Bridgeport dated September 27, 1997. This MOA may be amended at any time by a written amendment duly executed by both the Corps and the City.

ARTICLE XIV - GOVERNING LAW

This Agreement shall be governed by the laws of the United States of America unless otherwise specified herein. All documents developed, and all services provided by the Government, under this Agreement shall comply with all applicable federal laws, rules and regulations and, to the maximum extent possible, with state and local laws, rules and regulations.

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and dates written below.

U.S. Army, Corps of Engineers, New England District

By  (SEAL) Jan 5, 2001 (DATE)
Brian E. Osterndorf
Colonel, Corps of Engineers
Commander

CITY OF BRIDGEPORT, CONNECTICUT

By  12-28-00 (DATE)
Michael Freimuth
Director, Planning and Economic Development

Exhibit A
Scope of Work for Brownfields Site Manager

Task	Description of Task
1	<i>Develop Memorandum of Understanding (MOU) with each City</i> <ul style="list-style-type: none"> • The MOU will outline the roles and responsibilities of the USACE and each City
2	<i>Review and Comment on EE/CA Approval Memo</i> <ul style="list-style-type: none"> • Documents that the situation meets the NCP criteria for initiating a removal action and that the proposed action is non-time critical. • Provides detailed information pertaining to site background; threats to public health, welfare, or the environment posed by the site; enforcement activities; and projected costs. • Drafted using information provided by the borrower.
3	<i>Review & Comment on draft EE/CA developed by borrower</i> <ul style="list-style-type: none"> • Identifies the objective of the removal action and provides an analysis of alternatives.
4	<i>Ensure that public participation requirements are met</i> <ul style="list-style-type: none"> • The City as lead agency is responsible for carrying out the public participation requirements. The USACE will simply insure that the City has conducted its responsibilities which include establishing an information repository and administrative record, conducting community interviews, developing and implementing a site specific community relations plan, and providing public notice and a 30 day comment period for the EE/CA.
5	<i>Review and Comment on Action Memo</i> <ul style="list-style-type: none"> • Substantiates the need for a removal action, identifies the proposed action, and explains the rationale for the removal action selection. • Contains a response to the public comments on the EE/CA. • Drafted using information provided by the borrower.
6	<i>Review & Comment on design and construction plans developed by borrower</i>
7	<i>Conduct periodic site visits during implementation</i> <ul style="list-style-type: none"> • To insure compliance with approved plans. • To insure that all staff working on the response know site operating and safety procedures.
8	<i>Review and comment on Report at the conclusion of the removal action</i> <ul style="list-style-type: none"> • Summarizes the removal action including the amount of material cleaned up and the total costs of the action. • Drafted using information provided by the borrower
<p><i>NOTE: The tasks described in this scope of work have been summarized. A full description of these tasks can be found in the National Contingency Plan §300.415, the Guidance on Conducting Non-Time Critical Removal Actions under CERCLA, and the Brownfields Cleanup Revolving Loan Fund Manual.</i></p>	